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8 Attorneys for Plaintiff

9 UNITED STATES DISTRICT COURT
10 NORTHERN DISTRICT OF CALIFORNIA
11 OAKLAND DIVISION

12 UNITED STATES OF AMERICA,)	No. CR 04-40119 DLJ
13 Plaintiff,)	
14 v.)	PLEA AGREEMENT
15)	
16 ROBERT LYTTLE,)	Oakland Venue
17 Defendant.)	
18)	

19 I, Robert Lytle, and the United States Attorney's Office for the Northern District of
20 California (hereafter "the government") enter into this written plea agreement (the "Agreement")
21 pursuant to Rules 11(c)(1)(A) and 11(c)(1)(B) of the Federal Rules of Criminal Procedure:

22 The Defendant's Promises

23 1. I agree to plead guilty to Counts One through Five of the captioned indictment.
24 Count One charges me with unauthorized transmission of a program to protected computer,
25 recklessly causing damage, in violation of 18 U.S.C. §§ 1030(a)(5)(A)(ii), 1030(a)(5)(B)(i) & (v)
26 & 1030(c)(4)(B). Counts Two and Four charge me obtaining information without authorization
27 from a government computer, in violation of 18 U.S.C. §§ 1030(a)(2)(B) & 1030(c)(2)(B)(ii).
28 Count Three charges me with unauthorized transmission of a program to protected computer.

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intentionally causing damage, in violation of 18 U.S.C. §§ 1030(a)(5)(A)(i), 1030(a)(5)(B)(i) & (v) & 1030(c)(4)(A). Count Five charges me with unauthorized access of a non-public computer of the United States, in violation of 18 U.S.C. §§ 1030(a)(3) & 1030(c)(2)(A).

Count One (18 U.S.C §§ 1030(a)(5)(A)(ii), 1030(a)(5)(B)(i) & (v) & 1030(c)(4)(B))

I agree that the elements of the offense and the maximum penalties for unauthorized transmission of a program to protected computer, recklessly causing damage, are as follows:

(1) the defendant intentionally accessed a computer without authorization; (2) as a result of the defendant's access, the defendant recklessly caused damage; and (3) either (a) the impairment of the system resulted in losses to one or more persons totaling at least \$5,000 in value at any time during a one-year period or (b) the computer damaged was used by or for a government entity in furtherance of the administration of justice, national defense or national security

- | | | |
|----|---------------------------------|-------------------------|
| a. | Maximum prison sentence | 5 years |
| b. | Maximum fine | \$250,000 |
| c. | Maximum supervised release term | 3 years |
| d. | Mandatory special assessment | \$100 |
| e. | Restitution | As ordered by the Court |

Counts Two and Four (18 U.S.C. §§ 1030(a)(2)(B) & 1030(c)(2)(B)(ii))

I agree that the elements of the offense and the maximum penalties for obtaining information without authorization from a government computer are as follows: (1) the defendant intentionally accessed a computer without authorization or in excess of authorized access; (2) the defendant thereby obtained information from any department or agency of the United States; and (3) the offense was committed in furtherance of any criminal or tortious act in violation of the Constitution and laws of the United States or of any State.

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|----|---------------------------------|-------------------------|
| a. | Maximum prison sentence | 5 years |
| b. | Maximum fine | \$250,000 |
| c. | Maximum supervised release term | 3 years |
| d. | Mandatory special assessment | \$100 |
| e. | Restitution | As ordered by the Court |

1 Count Three (18 U.S.C §§ 1030(a)(5)(A)(i), 1030(a)(5)(B)(i) & (v) & 1030(c)(4)(A))

2 I agree that the elements of the offense and the maximum penalties for unauthorized
3 transmission of a program to protected computer, intentionally causing damage, are as follows:

4 (1) the defendant knowingly caused the transmission of a program, a code, a command or
5 information to a computer; (2) as a result of the transmission, the defendant intentionally caused
6 damage without authorization; and (3) either (a) the impairment of the data, system or
7 information resulted in losses to one or more persons totaling at least \$5,000 in value at any time
8 during a one-year period or (b) the computer damaged was used by or for a government entity in
9 furtherance of the administration of justice, national defense or national security.

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|----|----|---------------------------------|-------------------------|
| 10 | a | Maximum prison sentence | 10 years |
| 11 | b. | Maximum fine | \$250,000 |
| 12 | c | Maximum supervised release term | 3 years |
| 13 | d. | Mandatory special assessment | \$100 |
| 14 | e | Restitution | As ordered by the Court |

15 Count Five (18 U.S.C. §§ 1030(a)(3) & 1030(c)(2)(A))

16 I agree that the elements of the offense and the maximum penalties for unauthorized
17 access of a non-public computer of the United States are as follows: (1) the defendant
18 intentionally accessed without authorization a nonpublic computer of a department or agency of
19 the United States; (2) the computer was used for or by the Government of the United States; and
20 (3) the defendant's conduct affected that use by or for the Government of the United States.

- | | | | |
|----|----|---------------------------------|-------------------------|
| 21 | a. | Maximum prison sentence | 1 year |
| 22 | b | Maximum fine | \$100,000 |
| 23 | c. | Maximum supervised release term | 1 year |
| 24 | d. | Mandatory special assessment | \$25 |
| 25 | e | Restitution | As ordered by the Court |

26 I understand that, because I am pleading guilty to more than one count, the Court may order the
27 sentences on those counts to run consecutively.

28 2. I agree that I am guilty of the offenses to which I will plead guilty, and I agree that

1 the following facts are true: On April 26, 2002, without authorization, I intentionally accessed a
2 computer system of the Department of Defense, Defense Logistics Agency, Defense Logistics
3 Information Services (DLIS) in Battle Creek, Michigan. I admit that the DLIS was a United
4 States Government agency, and that the computer system that I accessed was used by the DLIS in
5 furtherance of the administration of justice, national defense or national security. After accessing
6 the DLIS computer system, I downloaded confidential information from that system for the
7 purpose of defacing the Web site located at www.micareonline.osd.mil by posting the
8 information to that Web site. As a result of my access to the DLIS computer system, I knowingly
9 altered the DLIS computer system.

10 After I downloaded the confidential information from the DLIS computer system, I then
11 gained access without authorization to a computer system of the Department of Defense, Office
12 of Secretary of Defense, Office of Health Affairs (OHA) in San Antonio, Texas. I used computer
13 files containing the confidential information from the DLIS computer system, and other
14 computer files, to intentionally deface a Web site hosted on the OHA computer system,
15 www.micareonline.osd.mil. I defaced the OHA Web site on or about April 26, 2002.

16 On April 23, 2002, without authorization, I intentionally accessed a non-public computer
17 system of the National Aeronautics and Space Administration's (NASA) Ames Research Center
18 (ARC), located at Moffett Field, California. I admit that NASA ARC was a United States
19 Government agency and that the NASA ARC computer system that I accessed was used by or for
20 the United States Government. My initial access to the NASA ARC computer system was for
21 the purpose of obtaining information relating to members of NASA's Astrobiology Institute in
22 order to deface the Web site located at web99.arc.nasa.gov by posting the information to that
23 Web site. Later on the same day, I accessed the NASA ARC computer system and posted files
24 containing the Astrobiology Institute information, and other computer files, in order to
25 intentionally deface the Web site located at web99.arc.nasa.gov. By performing these acts, I
26 affected the United States Government's use of the NASA ARC computer system.

27 Each of the computer systems that I accessed was connected to the Internet and,
28 accordingly, was used in interstate communication. I performed all of the actions described

1 above while using a computer located in my home at 141 Golf Club Road, Pleasant Hill, CA.

2 As a result of my actions, numerous Department of Defense and NASA employees spent
3 time applying proper security measures to the DLIS, OHA, and NASA ARC computer systems
4 and otherwise addressing the intrusions. The total loss (as defined in 18 U.S.C. § 1030(e)(11))
5 due to the agencies' efforts and due to the damage (as defined in 18 U.S.C. § 1030(e)(8)) that I
6 caused to the three computer systems was \$65,288 — \$13,052 with respect to the OHA computer
7 system; \$48,771 with respect to the DLIS computer system; and \$3,465 with respect to the
8 NASA ARC computer system. I admit that all of these costs were incurred within a one-year
9 period. I also agree that the Court will consider as relevant conduct the damage that I caused to
10 other government computer systems as a result of similar defacements that I performed,
11 including an April 30, 2002 intrusion to the computer system of the Department of Energy's
12 Sandia National Laboratory. Those damages totaled \$5,893. The total amount of damages
13 identified above is \$71,181. I agree that this is the amount that should be used to determine the
14 loss amount pursuant to U.S.S.G. § 2B1.1.

15 I admit that I committed all of the offenses to which I am pleading guilty while I was
16 under a criminal justice sentence. Specifically, in 2000, I was prosecuted in Contra Costa County
17 juvenile court for tampering with computer systems, in violation of California Penal Code
18 § 502(c)(4). On or about November 2, 2001, I admitted both charges of the indictment in that
19 case. In or about February 2002, I was sentenced to two years' probation. Accordingly, I was
20 still on probation and under a criminal justice sentence when I committed the offenses to which I
21 am pleading guilty. I agree, therefore, that my criminal history category under the United States
22 Sentencing Guidelines should be calculated at least as criminal history category II.

23 Finally, as I have expressed in the past, my intent in performing all of the actions
24 described above was to alert the United States Government to flaws in its cyber-security. As I
25 have stated before, I accessed the above computer systems solely for the purpose of exposing
26 known security vulnerabilities within the United States Government's information infrastructure
27 by means of obtaining sensitive information and posting it on the World Wide Web as part of
28 what I referred to as Operation Inform and Operation Foreign Threat.

1 3. I agree to give up all rights that I would have if I chose to proceed to trial,
2 including the rights to a jury trial with the assistance of an attorney, to confront and cross-
3 examine government witnesses; to remain silent or testify; to move to suppress evidence or raise
4 any other Fourth or Fifth Amendment claims; to any further discovery from the government; and
5 to pursue any affirmative defenses and present evidence.

6 4. I agree to give up my right to appeal my convictions, the judgment, and orders of
7 the Court. I also agree to waive any right I may have to appeal my sentence.

8 5 I agree not to file any collateral attack on my convictions or sentence, including a
9 petition under 28 U.S.C. § 2255, at any time in the future after I am sentenced, except for a claim
10 that my constitutional right to the effective assistance of counsel was violated.

11 6 I agree not to ask the Court to withdraw my guilty pleas at any time after they are
12 entered.

13 7 I agree that the Court will calculate my sentencing range under the Sentencing
14 Guidelines. I understand that the Court, while not bound to apply the Guidelines, must consult
15 those Guidelines and take them into account when sentencing. I agree that regardless of the
16 sentence that the Court imposes on me, I will not be entitled, nor will I ask, to withdraw my
17 guilty pleas. I agree to the following stipulations regarding Sentencing Guidelines calculations. I
18 also agree that I may, pursuant to the Sentencing Guidelines, ask for other adjustment to or
19 reduction in the offense level or for a downward departure from the Guidelines range:

- | | | |
|----|---|----|
| 20 | a. Base offense level, U.S.S.G. § 2B1.1: | 6 |
| 21 | b. Amount of loss between \$70,000 and \$120,000, | |
| 22 | U.S.S.G. § 2B1.1(b)(1)(E): | +8 |
| 23 | c. Acceptance of responsibility | |
| 24 | (If I meet the requirements of | |
| 25 | U.S.S.G. § 3E1.1): | -2 |
| | d. Adjusted offense level: | 12 |

26 I agree that a sentence within the Guideline range determined by the Court will be reasonable.

27 8 In return for the government's promises set out below, I agree to pay restitution to
28 the United States in an amount to be set by the Court, but in no event less than \$71,181. I

1 understand that the United States District Court for the District of Columbia has previously
2 ordered the defendant in the case captioned United States v. Benjamin Stark, CR 04-195, to pay
3 restitution in the amount of (1) \$13,052 for the damages to the OHA computer system;
4 (2) \$10,061 for the damages to the DLIS computer system; and (3) \$5,893 for the damages to the
5 Sandia National Laboratory computer system, in addition to other restitution. Accordingly, with
6 respect to these amounts for these computer systems, I understand that my restitution liability
7 will be joint and several with Benjamin Stark. I agree that I will make a good faith effort to pay
8 any fine, forfeiture or restitution I am ordered to pay. Before or after sentencing, I will, upon
9 request of the Court, the government, or the U.S. Probation Office, provide accurate and
10 complete financial information, submit sworn statements and give depositions under oath
11 concerning my assets and my ability to pay, surrender any assets I obtained as a result of my
12 crimes, and release funds and property under my control in order to pay any fine, forfeiture, or
13 restitution. I agree to pay the special assessment at the time of sentencing.

14 9. I agree not to commit or attempt to commit any crimes before sentence is imposed
15 or before I surrender to serve my sentence. I also agree not to violate the terms of my pretrial
16 release (if any); intentionally provide false information to the Court, the Probation Office,
17 Pretrial Services, or the government; or fail to comply with any of the other promises I have
18 made in this Agreement. I agree that, if I fail to comply with any promises I have made in this
19 Agreement, then the government will be released from all of its promises in this Agreement,
20 including those set forth in paragraphs 12 through 13 below, but I will not be released from my
21 guilty pleas.

22 10 I agree that this Agreement contains all of the promises and agreements between
23 the government and me, and I will not claim otherwise in the future.

24 11. I agree that this Agreement binds the U.S. Attorney's Office for the Northern
25 District of California only, and does not bind any other federal, state, or local agency.

26 The Government's Promises

27 12. The government agrees not to file or seek any additional charges against the
28 defendant that could be filed as a result of the investigation that led to the captioned indictment.

13 The government agrees to recommend the Guidelines calculations set out above.

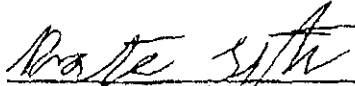
The Defendant's Affirmations

14 I confirm that I have had adequate time to discuss this case, the evidence, and this Agreement with my attorney, and that he has provided me with all the legal advice that I requested.

15 I confirm that while I considered signing this Agreement, and at the time I signed it, I was not under the influence of any alcohol, drug, or medicine.


16 I confirm that my decision to enter guilty pleas is made knowing the charges that have been brought against me, any possible defenses, and the benefits and possible detriments of proceeding to trial. I also confirm that my decision to plead guilty is made voluntarily, and no one coerced or threatened me to enter into this Agreement.

Dated: 3.11.05


ROBERT LYTTLE
Defendant


KEVIN V. RYAN
United States Attorney

Dated: 3/11/2005


KYLE F. WALDINGER
Assistant United States Attorney

I have fully explained to my client all the rights that a criminal defendant has and all the terms of this Agreement. In my opinion, my client understands all the terms of this Agreement and all the rights he is giving up by pleading guilty, and, based on the information now known to me, his decision to plead guilty is knowing and voluntary.

Dated: 3/11/2005


OMAR FIGUEROA
Attorney for Defendant